

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

ELOISE BEARD, as Administratrix of the  
Estate of Jeff Beard, the Deceased,

*Petitioner,*

v.

WILLIAM M. O'NEAL, L. PATRICK GRAY, KENNETH  
GRANT, ROY K. MOORE, and FEDERAL BUREAU OF  
INVESTIGATION,

*Respondents.*

## WILLIAM M. O'NEAL'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

EDWARD L. FOOTE  
GERALD C. PETERSON  
WINSTON & STRAWN  
One First National Plaza  
Suite 5000  
Chicago, Illinois 60603

*Attorneys for Respondent William  
M. O'Neal*

## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES .....	ii
REASONS WHY THE PETITION SHOULD BE DENIED.....	1
A.    Petitioner Misstates The Facts And The Record .	2
B.    The Court Of Appeals Properly Applied The Law .....	5
CONCLUSION .....	7

TABLE OF AUTHORITIES

*Cases*

	PAGE
<i>Beard v. Mitchell</i> , 604 F.2d 485 (7th Cir. 1979) .....	<i>Passim</i>
<i>Bivens v. Six Unknown Agents</i> , 403 U.S. 388 (1971).....	5
<i>Mt. Healthy v. Doyle</i> , 429 U.S. 274 (1977) .....	6
<i>United States v. Robinson</i> , 503 F.2d 208 (7th Cir. 1974), <i>cert. denied</i> , 420 U.S. 949 (1975) .....	<i>Passim</i>
<i>Weathersford v. Bursey</i> , 429 U.S. 545 (1977) .....	5

*Statutes*

42 U.S.C. § 1983.....	5
-----------------------	---

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1984

No. 83-1909

---

ELOISE BEARD, as Administratrix of the  
Estate of Jeff Beard, the Deceased,

*Petitioner,*

v.

WILLIAM M. O'NEAL, L. PATRICK GRAY, KENNETH  
GRANT, ROY K. MOORE, and FEDERAL BUREAU OF  
INVESTIGATION,

*Respondents.*

---

WILLIAM M. O'NEAL'S BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

REASONS WHY THE PETITION SHOULD BE DENIED

The Petition for Writ of Certiorari borders on being frivolous. Two properly instructed federal juries, following lengthy trials, determined that Stanley B. Robinson, a renegade Chicago policeman-turned-killer, and *not* William M. O'Neal, abducted and murdered Jeff Beard on May 17, 1972.

Nevertheless, petitioner, twelve years after Jeff Beard's death, still persecutes O'Neal, the man who played a significant

role in bringing Jeff Beard's killer to justice. Petitioner engages in vicious hyperbole. She omits key facts, invents "facts" and otherwise misstates the record in an attempt to gain review by the Court.

Petitioner also misrepresents the Seventh Circuit's holdings in this case in an attempt to create a conflict among the circuits where, based upon a fair reading of that opinion, none exists.

William O'Neal respectfully submits that the Court should not grant a Petition for Writ of Certiorari that is based upon such material misrepresentations.

#### A. Petitioner Misstates The Facts And The Record

There can be no genuine issue as to the material facts as found by the juries in *United States v. Robinson*, 503 F.2d 208 (7th Cir. 1974), *cert. denied*, 420 U.S. 949 (1975) ("*Robinson*") and *Beard v. Mitchell*, 604 F.2d 485 (7th Cir. 1979) ("*Mitchell*"). Yet, petitioner persists in misrepresenting those facts. So that there can be no confusion, O'Neal sets forth the relevant facts as found by those juries.

On April 21 or 22, 1972, one Holmes contacted O'Neal to find out if O'Neal was willing to engage in certain unlawful activity with Stanley B. Robinson. Unknown to Holmes, O'Neal had been an informant for the FBI. O'Neal agreed to participate in Robinson's criminal activities for the sole purpose of providing information to FBI Agent Roy M. Mitchell. O'Neal had no other intent. *Robinson*, 503 F.2d at 210-211, 213.

O'Neal met with Robinson the next day, and shortly thereafter, began providing information regarding Robinson's criminal activity to FBI Agent Mitchell. *Mitchell*, 604 F.2d at 489.<sup>1</sup>

---

<sup>1</sup> Petitioner falsely claims that O'Neal began supplying the FBI with information on Robinson in February, 1972 (Pet. p. 5).

On May 17, 1972, Robinson called O'Neal and told O'Neal he could not meet him because Robinson was doing something else that evening. O'Neal protested that he did not want to be excluded and finally persuaded Robinson to allow him to accompany Robinson. 604 F.2d at 492.

At 6:00 p.m. that evening, Robinson, accompanied by O'Neal set out to perform a \$1,000 murder contract on a dope pusher named Jeff. *Id.*; *Robinson*, 503 F.2d at 212. Robinson knew only that his intended victim was a tall black man with a high natural hair style. After searching unsuccessfully for some time, O'Neal told Robinson he should get better information.<sup>2</sup> Robinson did so, but was still unable to locate Jeff Beard despite searching an additional two and one-half hours.

Then O'Neal told Robinson he was tired and wanted to go home. While driving O'Neal back to his car, Robinson spotted Beard in a pool hall. Robinson and O'Neal sat outside the pool hall for 45 minutes. During that time, O'Neal went to a telephone and called FBI Agent Mitchell at his home. Unfortunately FBI Agent Mitchell was not there. 604 F.2d at 492.<sup>3</sup> O'Neal left his name with FBI Agent Mitchell's wife and returned to the car.

When Beard finally left the pool hall, Robinson got out of the car and arrested and handcuffed him. Robinson and Beard got into the back of the car. Robinson ordered O'Neal to drive south. *Id.*

---

<sup>2</sup> Petitioner, without a shred of evidence to support her, claims that O'Neal "encouraged" Robinson to get a better description *so that the murder contract could be performed* (Pet. p. 12 n.3.) (Emphasis added). Contrary to this assertion, where O'Neal had obtained a timely and accurate description of another of Robinson's intended victims, O'Neal provided that information to the FBI and Robinson's intended target was saved. *Mitchell*, 604 F.2d at 493.

<sup>3</sup> FBI Agent Mitchell had not returned from corroborating other information supplied by O'Neal about Robinson's criminal activities. *Mitchell*, 604 F.2d at 492.

When O'Neal reached the 75th Street exit of Chicago's Dan Ryan Expressway, Robinson ordered him to exit so that he could make a phone call. Robinson was gone only a few minutes. O'Neal, out of fear for his own life, did not tell Beard that Robinson intended to kill him.<sup>4</sup> Robinson returned to the car and began driving. Robinson told Beard he was not under arrest, but that he wanted Beard to sell narcotics. Beard willingly agreed to participate in the scheme. *Robinson*, 503 F.2d at 212; *Mitchell*, 604 F.2d at 492.

Robinson drove to Indiana, pulled off the shoulder of the road and stepped out. O'Neal did not try to drive away. 604 F.2d at 492. Robinson asked Beard to step out of the car. When Beard got out, Robinson shot him. Beard dashed across the road into a gully. Robinson returned to the car. O'Neal told him that he had "really screwed up."<sup>5</sup> Robinson told O'Neal to stay there. Robinson pursued Beard, found him and killed him. Robinson then called to O'Neal for help. O'Neal saw Beard's body, which was thrown over a fence.

Based upon these facts, the jury in *Robinson* found that O'Neal did not violate Beard's constitutional rights because O'Neal lacked the requisite intent. 503 F.2d at 213. The jury in *Mitchell* completely exonerated FBI Agent Mitchell.<sup>6</sup>

---

<sup>4</sup> Two days before, O'Neal intervened to save the life of Joe Rubio. Robinson warned O'Neal not to interfere anymore and, that in the future, O'Neal had better do what he was told. 604 F.2d at 491.

<sup>5</sup> Petitioner claims, without any basis in the record that this statement "encouraged" Robinson to pursue and kill O'Neal (Pet. p. 7). Petitioner simply invents "facts" to suit her purposes.

<sup>6</sup> Nevertheless, petitioner baldly asserts that Robinson and O'Neal abducted and murdered Jeff Beard (Pet. p. 3). Petitioner also claims that O'Neal had a history of "criminal and violent conduct" (Pet. p. 5). This vicious inaccuracy is directly contrary to the Seventh Circuit's finding that O'Neal's criminal record consisted of convictions for theft and possession of marijuana which occurred *before* he was an FBI informant. 604 F. 2d at 489 n.4, 502 n.26.

Petitioner now claims that she never had an opportunity to present evidence to support her allegations against O'Neal (Pet. p. 10). Petitioner conveniently ignores the fact that she had a full opportunity to litigate her allegations against O'Neal in *Mitchell*. Based, upon that trial, the Seventh Circuit held that a jury could *certainly* have concluded that O'Neal's presence was more likely to prevent Beard's death than to cause it.

Moreover, petitioner fully responded to O'Neal's Motion for Summary Judgment. That motion was based upon the same grounds upon which the Seventh Circuit affirmed the district court's dismissal of this action (Pet. App. p. 6).

#### **B. The Court Of Appeals Properly Applied the Law**

In *Bivens v. Six Unknown Agents*, 403 U.S. 388, 397 (1971), the Court held that a plaintiff must demonstrate an injury *consequent* upon the violation by federal agents of his constitutional rights. Thus, petitioner was required to establish: (1) that O'Neal was a federal agent; (2) that he breached Beard's constitutional rights; and (3) that alleged breach was the cause, in fact, for Beard's death. The Seventh Circuit, properly applying the Court's rulings, held that petitioner failed to establish such a claim.

Petitioner does not point to a single Court of Appeals decision holding that an informant is a federal agent. Indeed, in *Weathersford v. Bursey*, 429 U.S. 545, 555-556 (1977) the Court indicated that an informant is *not* a state officer for purposes of 42 U.S.C. § 1983. *See also, Mitchell*, 604 F.2d 499 n.20.

But assuming, *arguendo*, that O'Neal was a federal officer, petitioner failed to apprise the Court of any Circuit Court ruling that an informant owes a constitutional duty to prevent a crime committed in his presence. Again, *Weathersford* is instructive. Justice Marshall stated that an informant is under no obligation



to reveal his identity where he has reason to fear for his own life or where an ongoing investigation might be compromised. 429 U.S. at 566 n.5 (Marshall, dissenting).

Based upon Robinson's murderous past, O'Neal had every reason to fear for his life. If O'Neal had sought to prevent Beard's murder by identifying himself, Robinson would have killed him too. *See, Mitchell*, 604 F.2d 491, 499 n.19. O'Neal, in fact, tried to save Beard's life. Tragically, FBI Agent Mitchell was not home when O'Neal called.

Under *Mt. Healthy v. Doyle*, 429 U.S. 274 (1977), petitioner cannot recover for an alleged constitutional violation if the injury would have occurred in any event. Here, the evidence fully establishes that Robinson was going to kill Beard, as he had killed others, whether or not O'Neal was present. Indeed, as the Seventh Circuit noted, O'Neal's presence gave Beard opportunities to survive that he did not otherwise have. *Mitchell*, 604 F.2d at 499 n.19. *See also*, Petitioner's Appendix pp. 8-9.

As the Seventh Circuit correctly found, O'Neal did not cause Beard's death. O'Neal caused only Robinson's capture and conviction, thereby saving other lives (Pet. App. pp. 8-9).

## CONCLUSION

For any and all of the reasons set forth herein, William M. O'Neal requests that the Petition for Certiorari be denied.

Respectfully submitted,

WILLIAM B. O'NEAL

July 31, 1984

By \_\_\_\_\_

Edward L. Foote  
Gerald C. Peterson  
*Attorneys for Respondent*

## OF COUNSEL:

WINSTON & STRAWN  
One First National Plaza  
Suite 5000  
Chicago, Illinois 60603  
(312) 558-5600